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where the insufficiency of the judgment is open to review. It proceeds upon the ground that the variance, though held to be material in the first prosecution, was in fact immaterial, and that the indictment was therefore sufficient. Regardless of the merits of the question of variance in this particular case, the court seems to have gone to great lengths in assuming the right to reopen the point of its materiality. If a variance previously held material may in a second prosecution be declared immaterial, no reason appears why a variance previously held immaterial may not, in the same way, be declared material, so as to allow a second prosecution on the same offense for which the defendant has already been convicted and punished. The result is to make the outcome of the first prosecution, though not appealed from, practically inconclusive, and to leave the question of jeopardy an open one even where an appeal by the State is not allowed.

EFFECT OF PARDON ON DIVORCE FOR CONVICTION OF CRIME.—The pardoning power in the United States, though it rests upon constitutional provision as an independent foundation, *Ex parte Wells* (1855) 18 How. 307, must be considered in the light of English history and the earlier cases. *U. S. v. Wilson* (1833) 7 Pet. 150. These sources throw more light upon the scope and proper exercise of the power than upon its precise effect; but it is apparent that it results in more than a mere cessation of imprisonment. The pardoned man is no longer a criminal, and a designation of him as such is slanderous. *Bac. Abridg.*, "Pardon" [h]; *Cuddington v. Wilkins* (1615) Hob. 81. His fines cannot be collected, *Shoop v. Commonwealth* (1846) 3 Pa. 126, and his disabilities, consequent to conviction, are removed, as in restoring the right to vote, *Jones v. Board* (1879) 56 Miss. 766; *Wood v. Fitzgerald* (1870) 3 Ore. 568, or to hold office, *Hildreth v. Heath* (1878) 1 Ill. App. 82, or to be a witness, *Rex v. Crosby* (1695) 2 Salk. 689; *State v. Foley* (1880) 15 Nev. 64, though as to the last, under certain statutory provisions as to perjury, pardon is ineffectual, the incapacity being regarded as a rule of evidence and not a disability. *Houghtaling v. Kilderhouse* (N. Y. 1851) 1 Park. C. C. 241. The pardon "releases the punishment and blots out the existence of the guilt. * * * It makes him a new man with a new credit and capacity." *Ex parte Garland* (1866) 4 Wall. 333.

The retrospective effect of a pardon is less complete, though the decisions are not in entire harmony on the point. A pardon does not "make amends for the past. It affords no relief for what has been suffered." *Knote v. U. S.* (1877) 95 U. S. 149. It cannot obliterate the crime as an indication of moral character, *In re Spencer* (1878) 5 Sawy. 195; *Sanborn v. Kimball* (1875) 64 Me. 140, or as affecting credibility as a witness. See 11 Am. Jur. 356. Nor, it seems, is the fact of the crime itself gainsaid, in all cases. It is lawful to say of a pardoned thief, "you were a thief," *Baum v. Clause* (N. Y. 1843) 5 Hill 196, though the fact of conviction cannot be used as a basis of disbarment, *Scott v. State* (1894) 6 Tex. Civ. App. 343, or of an increased sentence for "second offense," *Edwards v. Commonwealth* (1883) 78 Va. 39. At any rate it is clearly settled that a pardon cannot affect rights which "have been

vested in others directly by the execution of the judgment for the offense, or which have been acquired by others whilst that judgment was in force." *Knote v. U. S.*, supra. Thus an office forfeited by conviction is not regained by pardon, *King v. Turvil* (1676) 2 Mod. 52; *Commonwealth v. Fugate* (Va. 1830) 2 Leigh 724, nor fines actually collected. *Knote v. U. S.*, supra. Also the pardon does not deprive one of his right to a reward for obtaining conviction, *Ex parte Garland*, supra, nor the criminal of his liability for costs to the prosecutor. *State v. Mooney* (1876) 74 N. C. 98.

An interesting point is raised by a recent case, *Holloway v. Holloway* (Ga. 1906) 55 S. E. 191, relative to the effect of pardon on conviction for crime as a ground of divorce. Under the rule that a pardon will not be allowed to affect vested rights, it has been held that it cannot invalidate a marriage legally contracted while the former husband was in prison, *In re Deming* (N. Y. 1813) 10 Johns. 232, and it seems equally true that it cannot annul a divorce already obtained, though not followed by remarriage. 1 Bishop, Marriage, Divorce, etc. §1807. Where the divorce is not sought until after the pardon is granted, it is not clear that, except in those jurisdictions where the marriage is dissolved *ipso facto* by the conviction, *Wisconsin v. Duket* (1895) 90 Wis. 272, any vested right is interfered with by allowing the pardon to destroy the ground of divorce. But in *Holloway v. Holloway*, supra, it was held that the ground was not destroyed and that the wife could sue even after her husband's pardon. The statute in that case made the cause for divorce conviction and sentence for more than two years. The husband at the time of pardon had been convicted and sentenced to more than two years, and, indeed, had served more than that period. Under the view, above noted, that a pardon does not properly relate back so as to affect the original fact of conviction, *Baum v. Clause*, supra, nor the past imprisonment and stigma consequent thereto, *In re Spencer*, supra, it may be argued that even though no vested right is interfered with, the pardon should not destroy the ground for divorce. Yet it is variously intimated that the underlying cause of this ground is not the ignominy of the conviction, *Foy v. Foy* (N. C. 1851) 13 Ired. 90, but the enforced and continued separation, *Davis v. Davis* (1897) 102 Ky. 440, which leaves small reason, once the enforced separation is over, for interfering with marital relations, where they have not been already ended by judicial decree. But where the distinctions concerning the effect of pardon upon past facts and conditions are so fine, the result reached in *Holloway v. Holloway*, supra, cannot be severely criticised.

The proposed draft of the uniform divorce law, while including conviction for crime among the grounds of divorce, makes no mention of the effect of pardon. 68 Alb. L. J. 298. In view of the strict construction which such grounds, unknown to the common law, *Hamaker v. Hamaker* (1856) 18 Ill. 317, may receive, it seems desirable that this point should not be left unsettled, especially since it is expressly provided, that a pardon shall be without effect, in a number of the statutes which the uniform law would supplant.

DANGEROUS USE OF HIGHWAYS.—The maintenance and use of highways involve a three cornered relationship of rights and duties. There